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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,591	12/15/2000	Jim Otter	8940; 60246-116	1229
26096 7590 12/24/2008 CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009				
EXAMINER PARKER, FREDERICK JOHN				
ART UNIT		PAPER NUMBER		
1792				
MAIL DATE		DELIVERY MODE		
12/24/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JIM OTTER

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Application 09/738,591  
Technology Center 1700

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Mailed: December 23, 2008

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Before KRISTA ZELE, *Deputy Chief Appeals Administrator*.  
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received by the Board of Patent Appeals and Interferences on August 14, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

### **APPEAL BRIEF, APPEALED CLAIMS**

Appellant has not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 1-3, 5, 7, 22, 25-27, 29-40, and 42. The rejected claims that have not been appealed and/or argued for appeal are claims 25, 29-32, and 36.

### **DISCUSSION**

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8<sup>th</sup> ed. Rev. 6, Sept 2007).

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to enter a paper canceling claims 25, 29-32, and 36.
- 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims; and
- 3) such further action as may be required.

Application 09/738,591

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/ls

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